IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Notice of Motion No. 544 of 2007
in
SUIT NO. 523 OF 1988

Pratapsingh Shoorji Vallabhdas & 2 ors. ... Plaintiffs
VS.
State of Maharashtra . . ... Defendant

Mr. H. V. Chande for plaintiffs.
Ms. Mamta Sadh AGP for defendant

CORAM: **D.G. KARNIK J**.

DATE: February, 12, 2007

P.C.:

1. Heard learned counsel for the appearing parties. This notice of motion is taken out in a suit which is listed on board for hearing. Under Rule 156 of the Bombay High Court, Original Side rules the notice of motion is required to be heard by the Judge before whom the suit is listed for hearing. Accordingly the motion is taken up for hearing. By consent the motion is heard finally.

2. This motion is taken out for condonation of delay in filing the written statement.

3. By order dated 16th March 1990 the defendant was directed to file the written statement within 12 weeks. The written statement was not filed for nearly 17 years. The motion is taken out on 9th February 2007 for condonation of delay. In the affidavit in support of the motion it is stated that in the year 2004 there were general elections of Assembly and general elections of the Parliament. On account of that the Talati who was also an Assistant Returning Officer of Mulund Constituency could not prepare the written statement.

4. General elections to the Assembly and Parliament were held in May 2004. The direction to file the written statement was issued on 16th March 1990. No explanation has been offered for the delay between March June 1990 till May 2004 for not filing the written statement. Further the Assembly elections were over in May 2004 and there were no general elections either of Assembly or of Parliament between the year May

2004 till February 2007. Even during this period the written statement was not filed. Thus in my view the reason given of the General elections is only a rouse and there has been no real reason for condonation of delay. However, taking into consideration the fact that the suit is against the Government against recovery of tax I am of the view that the delay should be condoned, subject to payment of costs. It is needless to say that the Government is free to recover from the officials concerned the costs it is required to pay.

5. The motion is allowed and the written statement be taken on record, subject to payment of costs of Rs.25,000/-, by the defendant - applicant within 4 weeks. Payment of costs shall be condition precedent. If the costs are not paid within 4 weeks the suit shall proceed without written statement of the defendant.

(D.G. KARNIK J.)